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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.135 OF 2007
IN
CRIMINAL WRIT PETITION NO.901 OF 2002

Sudhakar Bhojaya Shetty — Applicant/ Org.Petitioner

versus

Keru Laxman Tulve & anr. — Respondents

Mr.A.K.Tripathi i/by S.A.Tawate for applicant/ petitioner.

Mr.A.S.Gadkari, APP for respondents.

CORAM : SMT.RANJANA P. DESAI AND D.B.BHOSALE, JJ.

DATE : 13th June 2007

PC :

1. This application is filed by the applicant who is original petitioner in Writ Petition No.901 of 2003. Prayer clause (a) of the application reads as under :-

> "(a) That this Hon'ble High Court be pleased to direct the Registrar General of High Court of Judicature at Bombay to file the Criminal case/ perjury proceedings against the Respondent No.1 and 2 for the offences committed by them under Section 193 of Indian Penal Code R/W the Section 34 of Indian Penal Code

in the appropriate Court of Law."

2. It appears that this petition was disposed of on 21st March 2003 by the Division Bench headed by Justice D.G.Deshpande by recording a statement of the learned APP that an affidavit is filed in the matter wherein it is stated that the FIR is registered, investigation is in progress and after completion of the investigation the charge sheet will be filed before the Judicial Magistrate, First Class, Vasai. The statement was accepted and recorded. In view of this statement the learned counsel for the petitioner did not press the petition. That fact was also recorded and the petition was disposed of.

3. It appears that subsequently an application was made by the State for clarification of the order dated 21st March 2003. It was pointed out to the Court that in the affidavit filed in the instant writ petition the police officer has stated that after investigation he will file report to the Magistrate. It was pointed out that the investigation had revealed that the complaint of the respondent i.e. the original petitioner was totally false and therefore the police officer wants to file ‘B’ Summary Report

before the concerned Magistrate. It appears that it was pointed out to this Court that in spite of the affidavit filed by the police officer that after investigation he will file report to the Magistrate, in order dated 21st March 2003 statement of the APP was recorded that FIR is registered, investigation is in progress and after completion of investigation charge sheet will be filed before the concerned JMFC.. The order was therefore, sought to be modified.

4. This prayer was opposed by the applicant/ original petitioner at that time. The Court, however, allowed the application by observing as under :-

> "5. Present Application filed by the State is only seeking clarification in view of the further development. If at all the statement of the APP was recorded that charge sheet will be filed it was on the assumption that some case is made out on the basis of the FIR, but when after investigation no such case sufficient to file charge sheet is made out and to the contrary it is revealed that the complaint filed by the respondent is

false, the Applicants-State cannot be prevented from filing B-Summary. Therefore, this application is allowed, as prayed. B-Summary to be filed within one week from today before the concerned Magistrate. After the B-Summary is filed, before passing any final orders, the Magistrate will issue notice upon the Respondent through his Advocate Mr.S.A.Tawate, having address at 21, Jenabai Building, 2nd floor, Dadasaheb Phalke Road, Dadar (East), Mumbai 400 014."

5. In the present application it is contended by the applicant/petitioner that based on the declaration made by the respondents on oath in Criminal Application No.1667 of 2004 taken out in the instant writ petition for modification of the order dated 21st March 2003 and the affidavit filed by respondent no.2 in support of the said application, the order dated 21st March 2003 is modified. It is further contended that the said declaration and the affidavits are palpably false and frivolous and therefore, an action for perjury is sought under section 103 of the IPC R/W Section 34 of the IPC..

6. We have heard learned counsel for the petitioner. The submission that the declaration and the affidavits are false is made on the basis of the affidavits of some witnesses filed before the learned Magistrate. It is pertinent to note that the learned Magistrate has by order dated 22nd May 2007 granted ‘B’ Summary and in respect of the said affidavits he has observed that they are doubtful.

7. The petitioner has not yet challenged the order granting ‘B’ Summary. In view of the observations made by the learned Magistrate in paragraphs 28 and 29 of this order, we find that there is no substance in the contention based on the said affidavits that the declaration and affidavit of respondent no.2 are false and frivolous. We feel that without challenging the learned Magistrate’s order granting ‘B’ Summary, in effect the petitioner is trying to get the observations made by the learned Magistrate in paragraphs 28 and 29 of his order dated 22nd May 2007 set aside. That cannot be allowed. In any event, in our opinion, it is not possible to say that any false declaration or affidavit has been filed by the respondents. We, therefore, find no

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substance in the application.

8. It was prayed that order dated 16th January 2007 passed by the Division Bench of this Court to which one of us (Ranjana Desai, J.) is party, is challenged in the Supreme Court and therefore this petition should be adjourned. Admittedly, till date, the petitioner has not circulated the special leave petition for admission. We do not find it necessary to give further time because the issue involved here is not in any way connected with the judgment and order of Division Bench of this Court dated 16th January 2007 in Writ Petition No.1265 of 2005. In the circumstances the application is rejected.

(SMT.RANJANA P. DESAI, J.)

(D.B.BHOSALE, J.)